

No. 75-1731

Supreme Court, U. S.

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MICHAEL RODAK, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1975

JOHN F. CARTER, PETITIONER

v.

AMERICAN BAR ASSOCIATION, ET AL.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE FIRST CIRCUIT**

**MEMORANDUM FOR THE SECURITIES AND EXCHANGE
COMMISSION IN OPPOSITION**

ROBERT H. BORK,
Solicitor General,
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Washington, D.C. 20530.

DAVID FERBER,
Solicitor to the Commission,
Securities and Exchange Commission,
Washington, D.C. 20549.

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**MEMORANDUM FOR THE SECURITIES AND EXCHANGE
COMMISSION IN OPPOSITION**

1. On August 1, 1974, upon finding various violations of the securities laws, respondent Securities and Exchange Commission revoked the registrations of Brokers Diversified, Inc., as a broker and dealer, and of Wellesley Management Corporation as an investment adviser; permanently suspended an exemption from registration of shares of Brokers Diversified Services Corporation; and barred petitioner, the controlling shareholder in these corporations, from being associated with any broker-dealer (Pet. App. W).

2. Petitioner, on behalf of himself and the above-mentioned corporations, thereafter filed a petition in the court of appeals, seeking review of the August 1, 1974, order of respondent Securities and Exchange Commission. On October 1, 1975, the court of appeals directed petitioner to file on or before October 15, 1975, an affidavit

indicating all other stockholders' interests in the petitioning corporations, and any adverse interests among the stockholders (Pet. App. I-3). On November 6, 1975, the court of appeals dismissed the petition for failure of petitioner to comply with its order of October 1, 1975 (Pet. 25).¹ No extension of time for filing a petition for a writ of certiorari in this Court was obtained, and the petition was filed on May 28, 1976. To the extent that the petition seeks review of the court of appeals' order of November 6, 1975, it is jurisdictionally untimely under 28 U.S.C. 2101(c).

3. Petitioner and the above-mentioned corporations also commenced an action in the United States District Court for the District of Massachusetts against the Commission, alleging, *inter alia*, that the agency's investigation of petitioner's activities and subsequent order of August 1, 1974 (Pet. App. W), denied petitioner and the corporations due process, and seeking injunctive relief and damages of \$50 million (Pet. App. E). The district court granted the Commission's motion to dismiss the action on the ground that the court lacked jurisdiction to review either decisions by the Commission to undertake investigations or orders of the Commission (Pet. App. D-1).

Petitioner filed a notice of appeal, and moved in the court of appeals for an order consolidating the appeal with an appeal of the district court's dismissal of another action petitioner had commenced against various other respondents. On May 5, 1976, the court of appeals refused to consolidate (Pet. App. G).

¹The court's order of November 6, 1976, which is not reproduced in petitioner's appendix, reads as follows:

It is ordered that the petition for review herein is hereby dismissed for failure of petitioner to comply with the order of this court of October 1, 1975, which directed petitioner to file an affidavit on or before October 15, 1975, unless a new attorney had entered an appearance.

There is no occasion for this Court to review that interlocutory ruling, which presents no important issue. The court of appeals has not yet decided whether the district court correctly dismissed the action. If the court upholds the dismissal, petitioner may ask this Court to review the refusal to consolidate in connection with any review he may seek of the court of appeals' final disposition of his case.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

DAVID FERBER,
*Solicitor to the Commission,
Securities and Exchange Commission.*

JUNE 1976.